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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
(Honorable Stanley A. Bastian)

UNITED STATES OF AMERICA,) Case No.: 1:14-CR-2102-SAB
)
Plaintiff,) DEFENDANT ABDELLATIF'S SENTENCING
) MEMORANDUM
vs.)
)
IBRAHIM ABDELLATIF,)
)
Defendant)
)

Defendant, Ibrahim Abellatif, by and through his attorney of record, Gregory L. Scott, hereby submits the following Sentencing Memorandum:

STATEMENT OF FACTS

On January 8, 2015, in the Eastern District of Washington, Mr. Abdellatif was arrested and his home and business were searched pursuant to Federal Warrants. As a result of those searches, approximately 1,400 packages of suspected "spice" was confiscated. According to the information printed on the outside of the packaging,

1 the total aggregate contents of those packages were approximately 5200
2 grams. Mr. Abdellatif pleaded guilty to this charge on July 6, 2016.

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4 **PRESENTENCE REPORT**

5 Although Mr. Abdellatif recognizes the accuracy of the
6 Presentence Report filed in this case, he respectfully disagrees with
7 the method used to calculate the guidelines.

8 Paragraph 29 of the Presentence Report quotes a portion of the
9 guidelines that indicates that in the case of controlled substances,
10 the entire weight of a mixture containing a detectible amount should
11 be used. However, in the case of synthetic THC as applied here by the
12 government, that makes no sense for the reasons noted below. The
13 Government's logic is that if a substance or mixture contains a
14 detectible amount of synthetic THC then multiply the entire weight of
15 the mixture by 167 to arrive at the equivalent amount of marijuana.
16 See Paragraph 32.

17 However, the same provision of the guidelines also indicates a
18 multiplier of 167 for organic THC. Therefore, applying the
19 government's logic to that provision would likewise require that if a
20 substance or mixture contains a detectible amount of organic THC then
21 multiply the entire weight of the mixture by 167 to arrive at the
22 equivalent amount of marijuana. That would necessarily lead to absurd
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1 results and would render the rest of that provision of the guidelines
2 superfluous. For example, that portion of the guidelines states that
3 if there is an amount of ground or powered marijuana, the applicable
4 ratio is 1:1. Yet we all recognize that ground or powdered marijuana
5 contains a detectible amount of organic THC. Likewise, that provision
6 in the guidelines provides that in the case of cannabis resin or
7 hashish apply a ratio of 1:5. And in the case of hashish oil, apply a
8 ratio of 1:50. In each case, the guidelines clearly recognize a level
9 of purity or distillation as the basis for the differing ratios.
10 Cannabis resin and hashish both contain organic THC. Distinctions are
11 made in this provision of the guidelines based on the purity of those
12 compounds. Hashish oil is more distilled than hashish or cannabis
13 resin, therefore it makes sense to treat it more harshly.

14 Only within this framework does it make any sense at all to apply
15 a ratio of 1:167 to organic THC. Congress could only have been
16 referring to pure, distilled THC. Likewise, because the identical
17 language is used in the very same section to apply a 1:167 ratio to
18 synthetic THC, it should be presumed that Congress had the same
19 intent.

20 Other places where Congress has indicated its desire to impose a
21 leveling with respect to sentencing appears in relation to cocaine vs.
22 cocaine base and methamphetamine vs. ice. Both of those situations
23

1 recognize Congress' intent to treat sentencing differently based on
2 the level of purity of the offending compound.

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4 **CASE LAW ADDRESSING THE 1:167 RATIO**

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6 In this case, if Mr. Abdellatif had possessed pure XLR-11, then
7 the multiplier of 167 would apply. See, *United States v. Malone*, 828
8 F.3d 331 (5th Cir. 2016), cert. denied, Nov. 28, 2016. In that case,
9 Mr. Malone and his business partner were manufacturing synthetic THC,
10 then applying it to vegetable matter and selling it under the brand
11 name, "Mr. Miyagi." The focus of the discussion in that case was
12 whether THC was the most closely related controlled substance to the
13 compound in question for purposes of applying the guidelines, and
14 whether the District Court had recognized that it had discretion to
15 depart from the guidelines pursuant to *Kimbrough v. United States*, 552
16 U.S. 85, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007). The court in *Malone*,
17 did not address the question presented here, i.e. whether the 1:167
18 ratio applies to only the amount of the pure compound or whether it
19 applies to the entire quantity of a mixture containing a detectable
20 amount of the compound. Clearly, the defendants in the *Malone* case
21 were manufacturing the pure synthetic THC and then spraying it on
22 vegetable matter before distribution. In Mr. Abdelatif's case, he was
23

1 merely acting as the retailer for the already prepared and packaged
2 material.

3 The *Malone* court did state at one point;

4 To the contrary, we agree with the district court that the
5 assertion that we *338 ought "compare an isolated chemical
6 with a leafy green substance" seems implausible on its
7 face—an uncertainty here not dispelled. Appellants sprayed
8 AM-2201 onto a leafy herb to create Mr. Miyagi. Just as THC
9 is the active ingredient in the leafy plant of marijuana,
10 AM-2201 was the active ingredient in Mr. Miyagi. Indeed,
11 any contention that the 1400 kilograms of AM-2201 that
12 Appellants admitted to possessing would have been used to
13 produce only 1400 kilograms of Mr. Miyagi—a product
14 intended to mimic marijuana—is defied by the record; it
15 reflects that the various participants in the conspiracy
16 would have used this quantity of AM-2201 to produce at
17 least twenty times as much Mr. Miyagi.

18 United States v. Malone, 828 F.3d 331, 337–38 (5th Cir.
19 2016), cert. denied sub nom. Green v. United States, 137 S.
20 Ct. 526, 196 L. Ed. 2d 408 (2016).

21 Although not directly stated, this reasoning certainly seems to
22 support Defendant's logic rather than the government's. Whatever
23 number of grams this court determines is the correct amount for
24 sentencing purposes, the correct ratio is 1:1, not 1:167.

25 In the case of *United States v. Ramos*, 814 F.3d 910 (8th Cir.
2016), cert. denied, U.S. Oct. 3, 2016. The court addressed the
question whether, under the evidence presented in that case, the
substances possessed by the defendants were most like pure THC or
straight marijuana for purposes of guideline computation. In

1 addressing that issue, the court held that similar substance question
2 is a factual determination. *Ramos, supra*.

3 Both sides presented testimony from experts regarding the nature
4 of XLR-11 and THC. The majority of the Ramos court held that, given
5 the evidence presented to the District Court at the sentencing
6 hearing, the appellate court could not find clear error in the
7 District Court's application of the guidelines. However, no similar
8 evidence is before this court. There is no evidence to suggest
9 whether the products at issue here are more like marijuana or more
10 like pure THC.

11 The dissent in the Ramos case sets out the argument why the
12 appropriate ratio is 1:1 rather than 1:167. Because the standard of
13 review was clear error, the majority held that it could not reverse
14 based solely on the method adopted by the District Court. That
15 opinion does not stand for the proposition that definitively, the
16 correct formula is to apply the 1:167 ratio in all cases involving a
17 mixture or a substance containing a detectable amount of synthetic
18 THC. Rather, it stands for the proposition that this court has
19 discretion to choose, for itself, which ratio should be applied.

1 **OTHER DISTINGUISHING FACTORS IN THIS CASE**

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3 Law enforcement confiscated over 1400 packets of material in this

4 case. Only five were tested. Each of those five came from controlled

5 buys over a period of months. The rest of the packets were seized at

6 the time they were delivered by UPS, during the execution of the

7 search warrant. Of the packets that were tested, no information

8 regarding purity is contained in the lab reports. Those reports

9 merely indicate that some amount of a particular controlled substance

10 was detected. It is interesting to note that the lab reports indicate

11 that four out of the five packets tested contain a controlled

12 substance different from what is alleged in the indictment.

13 With regard to the remaining packets seized, no information is

14 provided whether those packets all came from the same source as the

15 ones tested, whether they in fact contained the same or similar

16 compounds as the ones tested, or if the contents in fact contain

17 controlled substances at all. It is not even known whether the

18 packages delivered during the search came from one source or multiple

19 sources.

20 One of the frustrating facts about "spice" is that manufacturers

21 keep changing the chemical compounds to avoid prohibition by the DEA.

22 Nothing on the packaging indicates what chemical compounds are

23

1 contained therein. And as we appear before this court, no one knows
2 what chemical compounds are contained in any of those packets other
3 than the five tested. And, most importantly, no one knows if the
4 chemical compounds in those packets appeared on the DEA list of
5 prohibited substances at the time they were confiscated.

6 It is anticipated that the government will suggest that the five
7 packets that were tested are a "representative sample" and therefore,
8 the court is safe to assume that the other 1395 or so packets
9 contained the same material. However, that is not necessarily true.
10 By analogy, in the agricultural industry we are accustomed to taking a
11 representative sample and relying on it for purposes of quality, the
12 presence or absence of pests and adulterants, etc. However, no one
13 would suggest that taking a sample from one grower is a representative
14 sample for all agricultural products coming out of the Wenatchee
15 Valley. The same is true here. One packet may be a representative
16 sample of others with the same name and from the same lot number of a
17 particular manufacturer. But such a sample certainly cannot be
18 considered representative of other brands and/or manufacturers.
19 Particularly when we know that the modus operandi of each manufacturer
20 is to constantly change the chemical makeup in an effort to stay ahead
21 of the DEA. It would therefore be fundamentally unfair for this court
22 to apply the 1:167 ratio as suggested by the government.

1 **CORRECT APPLICATION OF THE GUIDELINES**

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3 The Court is left with a couple of options regarding how to apply

4 the relevant provisions of the guidelines. Given the uncertainty

5 surrounding the contents of these packets, Mr. Abdellatif suggests

6 that the court should apply a 1:1 ratio for the amount that we

7 actually have tested and know that some form of controlled substance

8 is indeed present. The total amount actually tested is 13 grams.

9 That would result in a Base Offense Level of 6 and a standard range of

10 2 to 8 months.

11 If the court were inclined to apply the ratio of 1:167 then the

12 equivalent amount of marijuana would be 2.17 Kilos. That would result

13 in a Base Offense Level of 8 and a standard range of 6 to 12 months.

14

15 **18 USC § 3553(a) FACTORS**

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17 The nature and circumstances of the offense and the history and

18 characteristics of the defendant:

19 The nature and circumstances of the offense are well covered in the PSR

20 and above. However, the history and characteristics of the defendant need

21 further attention. Mr. Abdellatif is a person upon whom at least five others

22 depend on for their support. His father passed away this past January.

23 Since that time, Ibrahim has shouldered the responsibility of his father's

1 family and his own. While Ibrahim does not have children of his own, his
2 father left small children and a young widow. As the oldest male in his
3 family, it is Ibrahim's responsibility to care for and support his siblings
4 until they marry and his parents as well as his own family. This is a
5 responsibility that is taken very seriously within the Arab community and Mr.
6 Abdellatif accepts that. His sister and girlfriend have been at every
7 hearing in support of Ibrahim. His extended family has also appeared at
8 several other hearings and in support of him at the time of his arrest and
9 detention hearing early on in this case. The Arab community in the Yakima
10 Valley is very small and Mr. Abdellatif is well regarded within that
11 community, as are his siblings.

12 The need for the sentence imposed to reflect the seriousness of
13 the offense, to promote respect for the law, and to provide just
14 punishment for the offense;

15
16 Mr. Abdellatif's arrest has already served notice to others in
17 the community regarding the lawfulness of selling the type of products
18 involved here. At the time of his arrest, it was common to find these
19 and similar products readily available and on display at numerous
20 shops and truck stops throughout Washington State. Since his arrest
21 and prosecution, those items seem to have practically disappeared from
22 store shelves. A bright line has been drawn around what once was a
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1 grey area of the law. A lengthy prison term for this offense would
2 promote disrespect for the rule of law rather than respect for it.

3
4 The need for the sentence to afford adequate deterrence to
5 criminal conduct;

6 As already stated above, the deterrence has already occurred on a
7 widespread basis.

8
9 The need for the sentence to protect the public from further
10 crimes of the defendant;

11 Mr. Abdellitif is not a menace to society and is not a person
12 from whom the public needs protection. He is a businessman who chose
13 to operate too close to the edge and he has paid a heavy price. At
14 the time of his arrest and before, many business people were selling
15 this type of product openly in their stores. He saw others making
16 profits and not facing legal troubles and he engaged in similar
17 business practices. He will not be selling this type of product ever
18 again.

19
20 The need for the sentence to provide the defendant with needed
21 educational or vocational training, medical care, or other
22 correctional treatment in the most effective manner;

1 Mr. Abdellatif is not in need of educational or vocational
2 training.

3
4 The kinds of sentences available and the applicable guideline
5 range;

6 The application of the guidelines to this case has already been
7 addressed above. If the court were to apply the guidelines in the
8 manner suggested by the government in this case, that would result in
9 a guideline range that is so far beyond the bounds of reasonableness
10 that no good could possibly come of it. However, the application of
11 the guidelines in the manner suggested by Mr. Abdellatif does
12 accomplish the goals set forth in the law.

13
14 The need to avoid unwarranted sentencing disparities;

15 This is a relatively unusual case in the sense that there have
16 been very few prosecutions of this nature in this area or around the
17 country. At the time of Mr. Abdellatif's arrest, the owners and
18 operators of One Love were also arrested and indicted for similar
19 offenses. However, the quantity of materials confiscated at those
20 stores dwarfs Mr. Abdellatif's inventory by comparison. It is the
21 understanding of the defense, based on conversations with the
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1 government, that no one in that other case has been sentenced to more
2 than 18 months.

3
4 Restitution;

5 As addressed in the Presentence Report, restitution is not an
6 issue in this case.

7
8 For all of these reasons, it is respectfully submitted that this
9 court sentence Mr. Abdellatif to probation. He has done well on his
10 pretrial supervision and has not had any issues whatsoever. His
11 conviction and the publicity from his arrest have had a huge impact on
12 him both personally and professionally.

13 RESPECTFULLY SUBMITTED this 5th day of May, 2017.

14
15 s/Gregory L. Scott

16 WSBA #17433

17 Attorney for Ibrahim Abdellatif
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1 I hereby certify that on May 5, 2017, I electronically filed the
2 foregoing with the Clerk of the Court using the CM/ECF System which
3 will send notification of such filing to the following, and/or I
4 hereby certify that I have mailed by United States Postal Service the
5 document to the following non-CM/ECF participants:

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